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## **REMARKS**

Claims 1-14, 18, 20, 23, and 26-28 are currently pending. Claims 1, 15, and 20 have been amended with the subject matter of cancelled claim 16 and are also supported by page 6, lines 6-10 of the application as filed. Claims 18 and 23 have been amended by the subject matter of page 7, lines 30-32, of the application as filed. Claim 15-17 and 19 have been cancelled without prejudice. New claims 26-28 are supported by claims 15, 17, and 19. It is respectfully submitted that no new matter has been added.

### **Telephone Interview Summary**

On February 20, 2008, at about 4:05 PM, a telephone interview was held between Applicant's representative Walter Malinowski and the USPTO. SPE Christian Chace and Examiner Mark Radtke participated on behalf of the USPTO.

Claims 1, 18 and 19 were discussed. Most of the focus of the interview was on claim 1. Examiner Radtke indicated that claim 1 from the proposed amendment may overcome the prior art of Apfel and McIntyre were the meaning of the proposed addition of the word "immediately" explained with sufficient clarity. He would like to see the record reflect the meaning of the word "immediately." Even though Applicant's representative pointed out that the proposed claim amendments find support in claim 16, Examiner Radtke indicated that such amendment would require further search and/or consideration and so suggested filing an RCE. Also, Examiner Radtke stated that use of language such as "is arranged to enable" does not reflect a positive recitation and suggested that language such as "which enables" more likely does. In claim 1, Examiner Radtke would like to see more explanation as to what is being done and considers "image field" and "database application" to need more meaning. He would like to see recitation of something like "a contacts list." Examiner Radtke considered claim 19 to be confusing because the method steps were of providing a messaging application and providing a database application. Examiner Radtke briefly talked about claim 18. He considers the term "messaging application" to be met by any application.

### Initial Response to the Response to Arguments

The Patent Office on page 10 of the Final Office Action dated October 31 2007 asserted that phrases such as “arranged to enable,” “to provide,” “providing,” and “operable ... to” are considered intended use because these phrases merely describe a capability of the claimed invention and are not positively recited. No case law was cited to support the Patent Office position. Only MPEP section 2111.04 was cited for support by the Patent Office. MPEP Section 2111.04 recites as follows:

Claim scope is not limited by claim language that suggests or makes optional but does not require steps to be performed, or by claim language that does not limit a claim to a particular structure. However, examples of claim language, although not exhaustive, that may raise a question as to the limiting effect of the language in a claim are:

- (A) "adapted to" or "adapted for" clauses;
- (B) "wherein" clauses; and
- (C) "whereby" clauses.

The determination of whether each of these clauses is a limitation in a claim depends on the specific facts of the case. In *Hoffer v. Microsoft Corp.*, 405 F.3d 1326, 1329, 74 USPQ2d 1481, 1483 (Fed. Cir. 2005), the court held that when a "'whereby' clause states a condition that is material to patentability, it cannot be ignored in order to change the substance of the invention." *Id.* However, the court noted (quoting *Minton v. Nat'l Ass'n of Securities Dealers, Inc.*, 336 F.3d 1373, 1381, 67 USPQ2d 1614, 1620 (Fed. Cir. 2003)) that a "'whereby clause in a method claim is not given weight when it simply expresses the intended result of a process step positively recited.'" *Id.*<

It is clear that MPEP Section 2111.04 is not making a blanket statement that a phrase such as “adapted to” is unacceptable. It merely states that one must consider the specific facts of the case.

In the present application, claim 1 recites “wherein the database application is arranged to enable a user to access personal data organized as a plurality of entries in a database.” Although the phrase “arranged to” is not listed in the non-exhaustive list of phrases that raise questions regarding their limiting effect, the Patent Office contends that this phrase is one that is considered

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to be “intended use.” It is important to consider the meaning of the claimed subject matter in its proper context. Here, we have a database application arranged to enable a user to access personal data. What is problematic with this? An application that is arranged to enable a user to access personal data is code or firmware that is established to perform one or more functions, such as permitting a user to access personal data. The claimed subject matter of “arranged to enable” is not intended use. It is not a case of whether the application can perform a function, because it can. What it means to recite language such as “arranged to” is that the application need not be running in order for a patent owner to be able to claim infringement.

The role of the Patent Office is to promote the useful arts. It does this by granting limited monopolies to exclude others from making or practicing an invention. In order to permit a patent owner to enforce his rights to exclude others, such as by pursuing infringers, enforceable claims need to be issued in a patent grant. The noted phrase, in a patent, would permit the patent owner to better pursue an infringer; for example, someone who is importing CDs or devices covered by the patent claims but for the CD or device being in operation to perform claimed functions and/or method steps.

The Patent Office asserts on page 10, lines 10-11, of the Final Office Action dated October 31 2007 as follows: “In effect, the claimed invention is a camera, an input device, memory and a processor.” Applicant disagrees. As is known, a claimed invention is more than a laundry list of elements. Interrelationships between elements and functionalities of elements are also part of a claimed invention and help to provide proper meaning to the metes and bounds of the claimed invention. To prohibit a claimed invention from being given meaning for a function or interrelationship that exists but is only called into play at certain times runs counter to the spirit of invention and is contrary to the promotion of the useful arts.

Applicant believes that all phrases such as “arranged to” and “to provide” as had been recited in the present claims cannot reasonably be considered “intended use.”

Nevertheless, to advance prosecution, in light of the February 20 2008 telephone interview between Applicant’s representative Walter Malinowski and USPTO personnel SPE

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Christian Chace and Examiner Mark Radtke, the claims have been amended to overcome the alleged deficiencies of the form of the claims perceived by the USPTO.

**Rejection of Claims 1-9, 12-21, 23, and 24 by Apfel in view of McIntyre**

The Patent Office rejected claims 1-9, 12-21, 23, and 24 under 35 U.S.C. 103(a) as being unpatentable over Apfel, U.S. Patent No. 6,973,299, in view of McIntyre, U.S. Patent No. 7,111,317.

New claim 26 corresponds to cancelled claim 15.

Claim 1 recites as follows

An electronic device comprising: a digital camera; a user input device; a memory for storing computer program instructions; and a processor operable under the control of the computer program instructions to provide separately a database application and a camera control application, wherein the database application provides a user interface that enables a user to access personal data organized as a plurality of contacts entries of a database, where each contacts entry is associated with a different person and has one or more alphanumeric text fields and an image field and wherein the camera control application provides a user interface that enables the user to control the electronic device using the user input device to capture an image via the digital camera and immediately upon capturing an image to present a user selectable option for entering the database application and using the captured image as an image field for one of an existing contacts entry and a new contacts entry of the database.

Claim 26 recites as follows:

A method comprising: capturing an image via a user interface of a camera control application; immediately upon capturing the image, providing at least one user-selectable option through the user interface of the camera control application for entering the captured image as an image field for a contacts entry maintained by a database application; upon selecting a user-selectable option for entering the captured image as an image field for the contacts entry, causing the camera control application to save the captured image as an image field for the contacts entry; and accessing a user interface of the database application to access contacts entries.

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Claim 20 recites, in pertinent part, as follows:

A computer readable medium encoded with a computer program comprising: program instructions for controlling an electronic device, the electronic device having a digital camera and a user input device, which program instructions when loaded into a processor, provide: a database application; and a camera control application that is separate from the database application, wherein the database application provides a user interface that enables a user to access personal data organized as a plurality of contacts entries in a database, where each contacts entry is associated with a different person and has one or more alphanumeric text fields and an image field and wherein the camera control application provides a user interface that enables the user to control the electronic device using the user input device to capture an image via the digital camera and immediately presents a user selectable option, on capturing an image, for entering the database application and using the captured image as an image field of a contacts entry of the database.

The Patent Office asserted from page 3, line 10, through page 4, line 6, of the Final Office Action dated October 31, 2007, as follows:

Apfel does not explicitly teach a digital camera; and a camera control application arranged to enable the user to control the device using the user input device to capture an image via the digital camera and to present a user selectable option, on capturing an image, for entering the database application.

McIntyre teaches an electronic device (see Abstract) comprising a digital camera (see column 3, line 38, “image capture device”); and a camera control application arranged to enable the user to control the electronic device using the user input device to capture an image via the digital camera and to present a user selectable option, on capturing an image, for entering the database application (see columns 12-13, spanning paragraph, particularly column 12, lines 61-62, “after taking a picture”).

Therefore, it would have been obvious to one of ordinary skill in the relevant art at the time the invention was made to have modified Apfel by the teaching of McIntyre because “[f]orms of communication for the one or more contacts include [...] multimedia message service (MMS)” (see Apfel, column 3, lines 52-55) and MMS messages are a well-known feature in camera phones. Furthermore, McIntyre anticipates the use of cellular phones at line 17 of column 22.

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Apfel discloses a mobile phone that stores contact information for multiple forms of mobile phone communication with the contacts (abstract). In Apfel, user information 250B may include a picture or graphic that the contact wishes to publish to represent himself or herself (column 5, lines 53-56). Apfel discloses that changed contact information may include a new email address, phone number, picture representation, etc., for contact 230A at PC 270A (column 7, lines 51-53). Apfel's mobile phone, in Figure 3, is shown to have a display 310 and directional button 364 but clearly does not have an image capturing portion, such as a lens. Although picture representations may be changed in contact information for a mobile phone, Apfel does not disclose or suggest providing a user selectable option, upon capturing an image, to enter an application, such as a database application.

McIntyre discloses "A system and method for obtaining photographic products and/or services and for the sharing of digital images without the need of a computer. In particular a cable set top box and cable communication network is used for communication with third parties, including image service providers" (abstract). McIntyre discloses capturing an image and associating text with it. The image may be printed out at a later time with the text appear on the image. McIntyre does not disclose or suggest providing a user selectable option, upon capturing an image, to enter an application, such as a database application.

Furthermore, Apfel is concerned with updating a contacts list from a mobile telephone, whereas McIntyre is concerned with providing photographic goods and services (e.g., column 22, lines 5-8). Whereas Apfel discloses an image associated with a contact in a database, McIntyre is directed to the printing of images which may also contain text. It is difficult to see the relevancy of a method and system for providing image goods and/or services to a customer, as disclosed by McIntyre, to a method and system for providing a unified contact list for a mobile phone user, as disclosed by Apfel and it is doubtful that one of ordinary skill in the art would look to McIntyre to modify Apfel.

Thus, claims 1-9, 12-21, 23, and 24 are allowable over Apfel in view of McIntyre.

Claim 1 recites "An electronic device comprising: a digital camera." The Patent Office provides that the motivation to modify Apfel is found in Apfel, column 3, lines 52-55 because "[f]orms of communication for the one or more contacts include [...] multimedia message

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service (MMS).” As Apfel has disclosed the source of any MMS images or pictures is the data service provider 210 (see column 5, lines 5-17) which communicates to a mobile phone 260 through the mobile phone carrier (Fig. 2), Apfel clearly does not teach a digital camera or even a camera and certainly does not show a camera or camera lens (see Fig. 3).

The Patent Office has not provided motivation for modifying Apfel by McIntyre to address the above noted subject matter from claim 1. Motivation surely cannot be based on the disclosure that Apfel may be able to receive MMS messages since such disclosure does not teach or suggest that the mobile phone which receives such messages also includes a camera.

For the sake of furthering prosecution, Applicant has further amended claim 1 to recite “the camera control application provides a user interface that enables the user to control the electronic device using the user input device to capture an image via the digital camera and **immediately** upon capturing an image to present a user selectable option for entering the database application and using the captured image as an image field for one of an existing contacts entry and a new contacts entry of the database.”

As such, the Patent Office has failed to make a *prima facie* case of obviousness based on Apfel modified by McIntyre for claim 1 and its dependent claims.

Regarding new claim 26, Apfel does not disclose “immediately upon capturing the image, providing at least one user-selectable option through the user interface of the camera control application for entering the captured image as an image field for a contacts entry maintained by a database application; upon selecting a user-selectable option for entering the captured image as an image field, causing the camera control application to save the captured image as an image field for the contacts entry; and accessing a user interface of the database application to access contacts entries.”

The Patent Office asserted that the paragraph spanning columns 12 and 13 in McIntyre discloses a camera control application that presents a user selectable option to enter a database application.

McIntyre does not teach or suggest the noted subject matter from claim 26. McIntyre, in the paragraph spanning from column 12, line 55, through column 13, line 3, discloses as follows:

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The configured firmware stored in the firmware memory 370 can include messages appropriate for various images, such as "Happy Birthday, John", or "Another Picture of the Smith family." These messages are provided by the customer in block 110 of FIG. 2, and downloaded to configure the APS film camera 350 in block 120 of FIG. 2. The message can be selected by the camera user after taking a picture, and can be then recorded as ASCII text data on the magnetic tracks of the APS film 380. When the APS film 380 is developed and printed, the magnetic tracks of the APS film 380 are read to recover this ASCII text message. The text message can then be printed on the back of the print if the print is made by optically printing the APS film 380. Alternatively, the text message can be printed on a front corner of the print if the print is made by scanning and digitally printing the APS film 380.

Looking at block 110 (or any other block) in Figure 2 does not show "immediately upon capturing the image, providing at least one user-selectable option through the user interface of the camera control application for entering the captured image as an image field for a contacts entry maintained by a database application; upon selecting a user-selectable option for entering the captured image as an image field, causing the camera control application to save the captured image as an image field for the contacts entry; and accessing a user interface of the database application to access contacts entries." Claim 26's well defined sequence of "immediately upon capturing the image, providing at least one user-selectable option through the user interface of the camera control application for entering the captured image as an image field for a contacts entry maintained by a database application" followed by "upon selecting a user-selectable option for entering the captured image as an image field, causing the camera control application to save the captured image as an image field for the contacts entry; and accessing a user interface of the database application to access contacts entries" is not found in the spanning paragraph or shown in Figure 2.

If the Patent Office persists in its position that McIntyre provides a teaching for the claimed subject matter, Applicant requests that the Patent Office point out with particularity (such as by part number or column and line number) where the first application is disclosed, where the second application is disclosed, and where the interrelationship of the first application and the second application in which "upon capturing the image" that the first application captures, immediately enabling "a user to enter a second application and assign the captured

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image to an image field of a first database entry?"

As such, claim 26 is allowable over Apfel in view of McIntyre.

Similar to claim 26, claim 20 recites "the camera control application provides a user interface that enables the user to control the electronic device using the user input device to capture an image via the digital camera and immediately presents a user selectable option, on capturing an image, for entering the database application and using the captured image as an image field of a contacts entry in the database."

For similar reasons as for claim 26, claim 20 is allowable over Apfel in view of McIntyre.

New claim 28 corresponds to cancelled claim 19.

Claim 18 recites as follows:

An electronic device comprising: message reception means; a user input device; memory means storing computer program instructions; and a processor operable under the control of the computer program instructions to provide separately a database application and a messaging application, wherein the database application provides a user interface that enables a user to access personal data organized as a plurality of contact entries in a database, where each contacts entry is associated with a different person and has one or more alphanumeric text fields and an image field and wherein the messaging application provides a user interface to display a received message including an image and to present a user selectable option for using the image as an image field of a contacts entry in the database while within the messaging application.

Claim 28 recites as follows:

A method comprising: upon receiving by a messaging application an image in an incoming message, presenting a user-selectable option for using the image as an image field of an entry of a contacts entry of a database; upon selecting the user-selectable option for entering the image as an image field for the contacts entry, causing a database application to save the selected image as an image field for the contacts entry while within the messaging application.

Claim 23 recites as follows:

A computer readable medium encoded with a computer program comprising: program instructions for controlling an electronic device, the electronic device having message reception means and a user input device, which program instructions when loaded into a processor, provide: a database application; and a messaging application that is

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separate from the database application, wherein the database application provides a user interface that enables a user to access personal data organized as contacts entries in a database, where each contacts entry is associated with a different person and has one or more alphanumeric text fields and an image field and wherein the messaging application provides a user interface that displays a received message including an image and presents a user selectable option for using the image as an image field of an contacts entry of the database.

Apfel discloses a unified contact list for a mobile phone user (abstract). Apfel's mobile phone 300 is shown to have the capability of sending mail 334 (Figure 3). "User information 250B ... may include a picture or graphic that the contact publishes to represent himself or herself..." (Apfel, column 5, lines 53-56). Apfel discloses that a PC may update contact information including picture representation and provide the updated contact information to a mobile phone that includes that contact that has been updated (column 7, lines 45-61).

However, Apfel does not disclose presenting a user selectable option for using the image as an image field of an entry of the database while within the messaging application.

McIntyre discloses a system and method for obtaining photographic products and/or services and for sharing of digital images without the need of a computer (abstract). McIntyre discloses Figure 10 as a flow diagram of a typical purchase transaction in which a customer may select a service such as emailing images to one or more e-mail addresses provided by the user.

Like Apfel, McIntyre does not disclose presenting a user selectable option for using the image as an image field of an entry of the database while within the messaging application.

Thus, claims 18, 19, and 23 are allowable over Apfel in view of McIntyre.

#### **Further Response to the Response to Arguments**

As requested in the previous response to office action, Applicant requests that the Patent Office point out by line number and column number and by part number where the limitation of "present a user selectable option" is found.

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Regarding the Patent Office assertion that “[a]ny processor is ‘operable... to provide’ any number of programs, and thus would anticipate the claimed invention.” Applicant notes that the Patent Office is not considering each element of the claims. MPEP Section 2106 states “when evaluating the scope of a claim, every limitation in the claim must be considered. USPTO personnel may not dissect a claimed invention into discrete elements and then evaluate the elements in isolation. Instead, the claim as a whole must be considered. See, e.g., *Diamond v. Diehr*, 450 U.S. 175, 188-89, 209 USPQ 1, 9 (1981)”

The Patent Office asserted, on page 3, lines 17-21, of the Final Office Action dated October 31 2007, that the limitation of a “**camera control application is arranged to enable the user to control the device using the user input device to capture an image via the digital camera and to present a user selectable option, on capturing an image, for entering the database application and using the captured image as an image field of an entry of the database**” is found in the paragraph spanning columns 12-13 in McIntyre. This paragraph of McIntyre is reproduced immediately below:

The configured firmware stored in the firmware memory 370 can include messages appropriate for various images, such as "Happy Birthday, John", or "Another Picture of the Smith family." These messages are provided by the customer in block 110 of FIG. 2, and downloaded to configure the APS film camera 350 in block 120 of FIG. 2. The message can be selected by the camera user after taking a picture, and can be then recorded as ASCII text data on the magnetic tracks of the APS film 380. When the APS film 380 is developed and printed, the magnetic tracks of the APS film 380 are read to recover this ASCII text message. The text message can then be printed on the back of the print if the print is made by optically printing the APS film 380. Alternatively, the text message can be printed on a front corner of the print if the print is made by scanning and digitally printing the APS film 380.

Applicant does not find the limitation of a user selectable option in this passage. The phrase “present a user selectable option” is recited in the context of “**camera control application is arranged to enable the user to control the device using the user input device to capture an image via the digital camera and to immediately present a user selectable option, on capturing an image, for entering the database application and using the captured image as an image field of an entry of the database**.” Applicant requests that the

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Patent Office provide the column and line numbers and part numbers corresponding to a “camera control application” arranged “to present a user selectable option, on capturing an image” in the cited passage of McIntyre or elsewhere in Apfel or McIntyre.

Furthermore, in the cited passage of McIntyre (spanning columns 12 and 13), where is the database and where is the disclosure of using the captured image as an image field of an entry of the database?

McIntyre discloses a firmware memory 370 that can includes messages for various images (column 12, lines 55-58). McIntyre discloses “The message can be selected by the camera user after taking a picture, and can then be recorded as ASCII text data on the magnetic tracks of the APS film 380.” McIntyre goes on to disclose that “when the APS film 380 is developed and printed, the magnetic tracks of the APS film are read to recover this ASCII text message” and that the text may be printed on the back of the print or on a front corner of a print.

How does McIntyre, in the passage spanning from column 12, line 55, through column 13, line 3, correspond to the recited subject matter of a **“camera control application is arranged to enable the user to control the device using the user input device to capture an image via the digital camera and to present a user selectable option, on capturing an image, for entering the database application and using the captured image as an image field of an entry of the database,”** recited in claim 1?

The Patent Office responded on page 10, lines 16-21, of the Final Office Action dated October 31, 2007, as follows:

At line 61 of column 12, McIntyre discloses a user optionally recording text to a magnetic medium after taking a picture. The limitation requires that the user is presented with an option to enter the database after taking a picture. The recording of text is equivalent to entering the database because the data on the film is considered a database. “Entering a database has no special meaning in the art and recording data could be reasonably considered “entering.” Thus, the claim limitations are met.

Claim 1 recites, in pertinent part, “the camera control application is arranged to enable the user to control the electronic device using the user input device to capture an image via the digital

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camera and to present a user selectable option, on capturing an image, for entering the database application and using the captured image as an image field of an entry of the database.” The argument that “entering” a database has no special meaning in the art is contrary to the MPEP section 2106 which states “USPTO personnel may not dissect a claimed invention into discrete elements and then evaluate the elements in isolation. Instead, the claim as a whole must be considered.” Furthermore, any deficiency for “entering a database” is moot and incomplete, since the claim more actually recites “to immediately present a user selectable option, on capturing an image, for **entering the database application.**”

**Rejection of Claims 10 and 11 by Apfel in view of Morita**

The Patent Office rejected claims 10 and 11 under 35 U.S.C. 103(a) as being unpatentable over Apfel as applied to claims 9 and 1 above, respectively, and further in view of Morita, U.S. Patent No. 6,766,018.

The Patent Office asserted on page 3, lines 10-14, of the Final Office Action dated October 31, 2007, as follows:

Apfel does not explicitly teach a digital camera; and a camera control application arranged to enable the user to control the device using the user input device to capture an image via the digital camera and to present a user selectable option, on capturing an image, for entering the database application.

The Patent Office’s admitted deficiency of Apfel would apply to claims 10 and 11 as these two claims indirectly or directly depend from claim 1, which was rejected by a combination of Apfel and McIntyre.

The Patent Office has cited column 1, lines 38-40, of Morita with respect to claim 10 and column 1, lines 35-37, of Morita with respect to claim 11. Morita, column 1, lines 33-40, discloses as follows:

Such a portable video telephone can also handle stored image information as information attached to the registered data in the phone book. At the time the phone book is searched for personal information, this capability can permit the user to conduct a search while viewing image information.

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When a call comes, this capability can display image information together with name information, helping the user understand immediately who the caller is.

Applicant requests that the Patent Office provide the column and line numbers and part numbers corresponding to a “camera control application” arranged “to immediately present a user selectable option, on capturing an image” in the cited passage of Morita or elsewhere in Apfel or Morita.

Since McIntyre is not relied upon in rejecting claims 10 and 11, where in Morita is a “user selectable option” presented? In Morita, where is the database and where is the disclosure of using the captured image as an image field of an entry of the database?

Morita appears to disclose replacing a displayed image by a currently decoded image that is acquired through a search result of a phone book and does not appear to disclose capturing an image or presenting a user selectable option, on capturing an image, for entering a database. Neither Apfel nor Morita appear to disclose or suggest “wherein the camera control application is arranged to enable the user to control the device using the user input device to capture an image via the digital camera and to present a user selectable option, on capturing an image, for entering the database application and using the captured image as an image field of an entry of the database.” Claims 10 and 11 are patentable because their base claim, 1, is patentable and Morita does not remedy the deficiency of Apfel.

Thus, claims 10 and 11 are allowable over Apfel in view of Morita.

Regarding page 11, lines 1-5, of the Final Office Action dated October 31, 2007, Applicant notes that Apfel, the primary reference, discloses MMS but does not disclose or suggest a digital camera having a database application and a camera control application with the claimed functionality. No motivation has been provided to place a digital camera in Apfel.

The Patent Office is respectfully requested to reconsider and remove the rejections of the claims 1-21, 23, and 24 under 35 U.S.C. 103(a) based on Apfel in view of McIntyre or Morita, and to allow all of the pending claims 1-14, 18, 20, 23, and 26-28 as now presented for examination. An early notification of the allowability of claims 1-14, 18, 20, 23, and 26-28 is

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earnestly solicited.

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Respectfully submitted:

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